

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460**

November 28, 1994

MEMORANDUM

SUBJECT: Comments on NRC'S Final Rule Amending NRC's Import/Export Regulations

FROM: David Bussard, Director  
Characterization and Assessment Division

TO: Richard J. K. Stratford, Director  
Office of Nuclear Energy Affairs  
Bureau of Political-Military Affairs  
U.S. Department of State

I am pleased to provide these comments in response to Canton R. Stoibers's letter requesting Executive Branch concurrence and comments on a final Nuclear Regulatory Commission (NRC) rulemaking. This rule would amend the NRC's licensing rules (10 CFR Part 110) to address the import and export of radioactive wastes that contain source, special nuclear, or byproduct material within NRC's Atomic Energy Act (AEA) jurisdiction. The rule is intended to conform NRC's requirements with the guidelines of the International Atomic Energy Agency (IAEA) Code of Practice on the International Transboundary Movement of Radioactive Waste.

We commend the NRC for developing a rule which will strengthen the Commission's control over radioactive wastes which enter and leave the United States. We support the Commission's efforts to adopt licensing controls that will advance the IAEA Code Principles, particularly, ensuring the informed consent of sending, receiving, and transit countries to transboundary movements, and ensuring as far as possible that receiving countries have the infrastructure and technical capacity to safely manage and dispose of the radioactive wastes.

Our comments identify a few areas where the licensing controls could be strengthened (in this or a subsequent rulemaking) to provide more effective tracking and control of transboundary movements. These suggestions are based on our experience with the Resource Conservation and Recovery Act (RCRA), particularly, in implementing regulations and agreements dealing with the transboundary movements of hazardous waste.

1. NRC has determined that issuing specific licenses for radioactive waste import and export is the most appropriate way to implement the basic IAEA Code of Practice principle that radioactive waste exports should proceed only with the consent of the affected countries. However, the final rule's export licensing criteria (10 CFR section 110.42) omits any specific reference to the foreign governments' consent as a prerequisite, and instead refers generally to the export being consistent with the IAEA Code of Practice. Since conformity with the IAEA Code's consent principle is a key objective of this rule, we believe consent of the foreign governments should be mentioned expressly in the decision criteria of section 110.42(d).
2. Based on our understanding of the scope of the current rule, NRC may wish to reconsider the appropriateness of including the vague reference to consistency with the IAEA Code of Practice guidelines among the section 110.42(d) decision criteria. We do not understand that this rule would address all the IAEA Code principles, such as taking back previously exported shipments that cannot be completed, and including provisions on liability and other remedies for damages that occur during these shipments. Therefore, some might conclude that NRC could not approve any license until all the IAEA Code principles are addressed. We doubt that the Commission intends this result.
3. Despite the importance of consent to the IAEA Code regime, the rule includes no specific mechanism or process under which that consent will be obtained. Nor does the rule identify whether the Commission intends that a document reflecting the terms of the consent given will be developed and accompany the shipment. We understand that the NRC expects that the State Department will coordinate the consents with the affected governments during Executive Branch consultation on particular licenses. However, we believe the approach would be more effective if the consent and tracking requirements were specified in the rules. The rules should also include some recordkeeping/reporting requirements that will enable the Commission to monitor the types and quantities of wastes that are actually involved in transboundary shipments, since these can vary from the projections given at the time of notification.
4. Another key principle that this rule supports is the exporting country's obligation to ensure itself that the country of import has the administrative and technical capacity to manage radioactive wastes safely. However, the Commission explains in the preamble to the rule that it questions how far it can go in making determinations about another country's capacity without intruding on sovereignty interests. Thus, the decision criteria in section 110.42(d) state that the NRC will review other countries' capabilities and apply this criterion to the "extent the Commission finds [this to be] practicable." We believe this is an awkward and perhaps inappropriate choice of words, especially if it could be interpreted as allowing NRC to approve a license in the face of difficulty conducting this review. The rule should be clear that an export could not proceed until the Commission was satisfied that this criterion was met.
5. We agree that there are sound policy reasons for excluding several types of radioactive materials from the rule's specific licensing controls and approval process. Among these materials, the rule identifies: used sealed sources that are being returned to manufacturers;

contaminated service tooling being shipped for reuse to another nuclear facility; radioactive waste returned to the U.S. after generation abroad by military or other U.S. Government operations; and radioactive waste generated in support of U.S. Government research and development programs conducted under international arrangements. However, it is not clear to us what consent and tracking requirements will apply to these shipments once they are excluded from specific licensing. Since these are identified as examples of shipments that may in fact occur with some frequency, less formal approaches to notification/consent and tracking shipments may be appropriate. It would be helpful if the rule explained any controls that would apply to transboundary movements of these materials.

6. We agree with the discussion in the rule concerning the joint RCRA/AEA regulation of mixed radioactive/hazardous wastes. However, for completeness, the rule should discuss more fully the consequences for import/export of joint regulation. In addition to discussing the applicability of EPA's hazardous waste export/import regulations (40 CFR Part 262, Subparts E and F), the rule should also discuss the implications for mixed wastes of the Basel Convention On the Control of Transboundary Movements of Hazardous Waste and Their Disposal. Since mixed waste is regulated as a hazardous waste in the U.S., and the U.S. is not yet a party to Basel, any proposed movement of mixed waste involving the U.S. and a Basel party is currently prohibited, unless it occurs under a bilateral or other agreement recognized under Article 11 of the Convention. In addition, Basel's restrictions and tracking controls extend beyond the more conventional "disposal" (e.g., landfilling or deep injection) operations to include transboundary movements destined for many recycling and recovery processes as well.

Thank you for the opportunity to contribute to the Executive Branch review of this action. If you need more information regarding these comments, please call Denise Wright of my staff on 202-260-3519 or Richard Lashier at 202-260-4669.

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